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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,207	12/07/1999	JEREMY VANDER WOUDE	MPATENT.160A	7416

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EXAMINER

KUMAR, PANKAJ

ART UNIT

PAPER NUMBER

2631

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/457,207

Applicant(s)

WOUDE, JEREMY VANDER

Examiner

Pankaj Kumar

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2631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,3,-5,8,11.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

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Applicant argues that the modem in the reference is not capable of testing different modems since it only does a self test and so the reference does not teach the applicant's invention. This is not persuasive since the applicant has not claimed that its modem has to be capable of testing different modems.

(As a side note, in Rahamim's fig. 3 block 310 teaches two modems when it says connect local modem to remote modem.)

Applicant argues that in the applicant's invention, "the first communication port is configured to connect a modem with a computer to the modem testing device" (request for reconsideration paper 11 page 3 lines 4-6). This is not persuasive since the applicant did not claim that the first communication port is configured to connect a modem with a computer to the modem testing device. The applicant claims "... a first communication port attached to the case and configured to be coupled directly to a modem thereby forming a primary communication link ..."

Applicant's arguments in the middle of page 3, that the second communication port is claimed to be connected to the computer. This is not persuasive since what is claimed is that the "... second communication port coupled to a signal reporting circuit ...". Thus the second communication port is not claimed to be connected to the computer.

Applicant's arguments in the middle of page 3, that the second communication port is claimed to be connected to the computer is also not persuasive since what is claimed is that the "... second communication port coupled to a signal reporting circuit and configured to be coupled with the computer ...". Thus the applicant is not claiming that the second communication port is connected to the computer. The claim says that the second communication port is configured, and this means that the RX SIG link between 140 and 118 which includes a second communication port (either in 118 or 140) can be configured such that eventually, down the line, a computer can be connected. Rahamim teaches this since eventually down the line, there is a computer connected.

Applicant argues for independent claims 5 and 8 that there is no alternate communication link. The applicant has been shown in a prior action that CONT. SIG. is an alternate communication link. Applicant does not refute the fact that CONT. SIG. is an alternate communication link. In fact, the applicant never even mentions CONT. SIG. in their reply. Therefore, the office maintains that CONT. SIG. is the alternate communication link.

Applicant also argues for independent claims 5 and 8 that they have claimed two alternate communication links. However, the applicants have not claimed this. They have only claimed one alternate communication link.

Applicant argues for claim 11 as well as claims 5 and 8, that they claim "two independent communication links" (request for reconsideration paper 11 page 4 line 11) when they claim an alternate communication link. The claims do not have the limitation of 'two independent


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communication links'. The claim also does not have the limitation that the alternate communication link is independent of any other communication link.

Applicant argues in the middle of page 4 that a microcontroller is not a necessary component of the modem (since in the preferred embodiments the microcontroller resides within the modem and in other embodiments the modem may not include a controller) and therefore the microcontroller cannot be the modem. This is not persuasive for multiple reasons. The fact that some embodiments, like the preferred embodiments, include the microcontroller within the modem means that the microcontroller is part of the modem. Also, the cited portion only says that in other embodiments, the modem may not include a controller. It does not say that the modem may not include a microcontroller. But even if it meant that, it is irrelevant since some embodiments have a microcontroller.

Applicant also seems to have some circular argument about the case limitation which is incomprehensible and not persuasive. Also, the claims do not contradict applicant's own statement of: "Thus, if the modem testing device of Rahamim comprises a case, it necessarily follows that the modem itself is within the case that is external to the computer, and thus external to the modem to be tested"

Applicant also argues on page 4 and 5 that Rahamim does not desire an external modem testing device and implies that that claims have this limitation. This is not persuasive since the claims also do not have the limitation of an external modem testing device. Although some claims have a portable modem testing device limitation, this does not necessarily mean it is an external modem testing device since, for instance, a modem inside a portable computer can also be considered a portable modem.


MOHAMMAD H. GHAYOUR
PRIMARY EXAMINER